**S.B. CIVIL WRIT PETITION NO. 3826/2007**
**(Dinesh Kumar Yadav Vs. The Rajasthan Civil Services Appellate Tribunal & ors.)**

Date of Order :: 13.07.2007

**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr.C.S.Kotwani for the petitioner
Mr.S.N.Trivedi for the respondent (caveator)

The petitioner working as Assistant Engineer with the Irrigation Department of Government of Rajasthan has preferred this writ petition assailing the order dated 13.06.2007 passed by the Rajasthan Civil Services Appellate Tribunal ('the Tribunal') in his appeal No.34/2007 vacating the ad-interim stay order earlier granted in his favour on 21.02.2007 staying the order of his transfer from Sriganganagar to Khajuwala.

Briefly put, the background facts and circumstances are that by an order dated 31.10.2005 the petitioner was transferred from Sriganaganagar to Bikaner; such order of transfer was challenged by him by filing an appeal before the Tribunal and the Tribunal stayed operation of the said order dated 31.10.2005 by its order dated 23.11.2005. Hence, the petitioner continued with his posting at Sriganaganagar. However, by subsequent order dated 15.02.2007 the petitioner

was transferred from Sriganaganar to Water Resources Sub-Division, Khajuwala. This order dated 15.02.2007 was challenged by the petitioner, again before the Tribunal, in appeal No.34/2007. On 21.02.2007 the Tribunal admitted the appeal for consideration and stayed operation of the transfer order till next date of hearing i.e., 22.03.2007.

On 22.03.2007 an application was moved on behalf of the present respondent No.5 Prabhu Dayal, who had been posted vice the petitioner at Sriganganagar, to be impleaded a party to the appeal. The application was allowed by the Tribunal and the applicant was ordered to be impleaded as respondent No.4 in the appeal and the matter was posted for hearing on the stay application on 25.04.2007.

On 25.04.2007, counsel for the appellant was not present but the Tribunal adjourned the matter for consideration of the stay application to 23.05.2007 in the presence of counsel for the respondent No.5 and extended the interim order till next date. On 23.05.2007 Full Bench of the Tribunal having not been constituted, the matter was adjourned to 13.06.2007 for consideration of the stay application.

On 13.06.2007, the Tribunal noted that counsel for the appellant (the petitioner herein) was not present despite repeated opportunities and that his associate counsel sought time. After recording presence of the government counsel and

counsel for the private respondent, the Tribunal proceeded to vacate the interim order dated 21.02.2007 and placed the appeal for hearing on 25.07.2007. The order dated 13.06.2007 that has been impugned in this writ petition reads as under:

> "दिनांक 13-6-07
> समक्षः- श्री बी.पी. आर्य, अध्यक्ष
> श्री समीर सिंह, सदस्य
> श्री अनिल कुमार मिश्रा, सदस्य
>
> अपीलार्थी के अभिभाषक श्री सी.एस. कोटवानी बार- बार अवसर दिये जाने के बावजूद अनुपस्थित। उनके सहयोगी अधिवक्ता ने समय चाहा। प्रत्यर्थी क्रमांक 4 के अभिभाषक श्री एस.एन. त्रिवेदी उपस्थित । राजकीय अधिवक्ता उपस्थित ।
>
> दिनाँक 21-2-07 को दिया गया अन्तरिम स्थगन आदेश समाप्त (Vacate) किया जाता है।
>
> पत्रावली दिनांक 25-7-07 वास्ते बहस अपील प्रस्तुत हो।"

This writ petition was filed on 22.06.2007, was placed for consideration before the Hon'ble Vacation Judge on 26.06.2007 and adjourned at the request of counsel for the petitioner to be taken up after vacation. The matter was then adjourned on 02.07.2007 to be taken up on 09.07.2007 and again it was adjourned on 09.07.2007 to be taken up on 11.07.2007. In the meantime, on 09.07.2007 a reply to the stay application was filed on behalf of the respondent No.5

contending, inter alia, that on 25.04.2007 counsel for the petitioner was not present and the Tribunal extended last opportunity to him to argue the matter on the next date; but in the month of May, the Tribunal was not constituted and thereby interim order continued in favour of the petitioner for about four months. The respondent has contended that after vacation of the interim order by the Tribunal on 13.06.2007, the respondent-Department had relieved the petitioner by the order dated 14.06.2007; that the petitioner proceeded on leave from 14.06.2007 to 22.06.2007 and again applied for extension of leave upto 30.06.2007 and filed writ petition in between and thus he was avoiding implementation of the transfer order; that the Superintending Engineer by his letter dated 29.06.2007 directed the Executive Engineer to ensure compliance of the transfer order of the petitioner by joining at the transferred place and directed initiation of disciplinary action in case of non-compliance; and that the Executive Engineer also instructed the petitioner by his letter dated 07.07.2007 to join at Khajuwala and hand over the charge to the respondent. The contesting respondent has further pointed out that when the transfer order dated 15.02.2007 was passed, he was relieved from the earlier posting place on 20.02.2007 and joined duties at the new transferred place of posting on 21.02.2007 whereas the stay order passed by

the Tribunal staying operation of the transfer order was communicated by the petitioner to the respondent Department only on 22.02.2007 before which the transfer order had already been given effect to.

It has been strenuously contended by learned counsel Mr.C.S.Kotwani for the petitioner that the Tribunal has been seriously in error in vacating the stay order on 13.06.2007; that the appeal had been admitted after hearing the counsel and interim order had also been granted and such order could not have been vacated that too without assigning any reason; that the order dated 13.06.2007 is entirely non-speaking order; and that in the overall facts and circumstances of the case, if the counsel for the petitioner could not remain present for personal reasons and a request for adjournment was made by his associate, such request could have been and ought to have been granted in the interest of justice and the petitioner ought not to have been denied reasonable opportunity of hearing.

Having given a thoughtful consideration to the entire subject matter, this Court is clearly of opinion that in the circumstances of the case, the order passed by the Tribunal remains unexceptionable and does not warrant interference in extra-ordinary writ jurisdiction.

From the record of the case, it is apparent that interim order staying operation of the transfer order was passed on 21.02.2007 and the incumbent posted vice the petitioner was impleaded party respondent in the appeal filed by the petitioner on 22.03.2007 and the matter was fixed for hearing on stay application on 25.04.2007. The order-sheet dated 25.04.2007 specifically records absence of counsel for the appellant. It has been stated in the writ petition regarding absence of 25.04.2007 that counsel could not appear due to some excess work. According to the petitioner,-

> "That on 25th April, 2007 the counsel for the petitioner on account of some excess work could not appear in time before the learned Tribunal and by the time, the counsel for the humble petitioner reached before the learned Tribunal, the matter was adjourned for 23rd May, 2007....."

It is noteworthy that despite adjourning the matter for absence of counsel for the appellant on 25.04.2007, the Tribunal yet extended the interim order till next date. On the next date i.e., 23.05.2007 the matter was adjourned for Full Bench of the Tribunal having not been constituted and was placed on 13.06.2007.

It is stated in the writ petition that on 13.06.2007 counsel for the petitioner was not in the town and as such

request for adjournment was made. The petitioner has averred,-

> "That on 13th June, 2007, the counsel for the humble petitioner was not in the town and he was out of station and as such, the junior counsel for the counsel of the humble petitioner appeared before the learned Tribunal and requested to adjourn the matter on account of absence of counsel for the humble petitioner, but the learned Tribunal without adhering to the request made by the co-counsel for the humble petitioner, has pleased to vacate the ad-interim stay order on 13th June, 2007 without assigning any good or cogent reason while keeping the appeal pending for hearing on 25th July, 2007."

It is apparent that while the matter was not argued on behalf of petitioner for the counsel remained absent on 25.04.2007 and an associate counsel sought time on 13.06.2007, on the other hand, counsel for the private respondent (respondent No.5) continuously appeared before the Tribunal on these dates. In view of nature of transfer order where the said private respondent has been posted vice the petitioner and was ready to argue on the stay application, the Tribunal could not have simply ignored his presence and in the circumstances of the case, the Tribunal cannot be faulted in vacating the interim order. If counsel for the petitioner had any difficulty, it was definitely required of the petitioner to have made alternative arrangements for the purpose of conduct of the case before the Tribunal.

It is true that an issue is preferred to be decided on merits rather than on technicalities; and usually the proposition of passing ex parte orders ought not be taken up but it cannot be said that as a matter of course, the Tribunal or the Court is required to adjourn the matter on the absence of the counsel. Looking to the subject matter of dispute, that being an order of transfer of the petitioner and looking to the earlier absence on the part of the petitioner on 25.04.2007 and the overall facts and circumstances, it cannot be said that the Tribunal has committed such illegality in vacating the interim order that might require interference in writ jurisdiction of this Court.

It is also true that by way of impugned order, the Tribunal has proceeded to vacate the stay order without stating any reason with reference to merits of the case; but looking to the circumstances that no submissions were made on behalf of the petitioner, there was no requirement for the Tribunal to deal with the merits. Moreover, an interim relief in the nature of injunction or stay, essentially being based on equitable considerations, the Tribunal cannot be faulted in not continuing with the interim relief any further in the facts and circumstances of this case. Looking to the nature of stay order of limited time and looking to the nature of litigation concerning a transfer order, it cannot be said that the Tribunal

has committed any error in simply recording vacation of the interim order when no submissions were made on behalf of the petitioner.

The appeal filed by the petitioner is even otherwise coming up for hearing on 25.07.2007 and there appears no reason to interfere with the impugned order at this stage.

The writ petition fails and is, therefore, dismissed.

**(DINESH MAHESHWARI), J.**

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